

By: Truitt

H.B. No. 2602

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain chiropractic clinics;  
creating an offense and providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 3, Occupations Code, is  
amended by adding Chapter 207 to read as follows:

CHAPTER 207. NON-DOCTOR-OF-CHIROPRACTIC-OWNED CHIROPRACTIC  
CLINICS

Sec. 207.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person or business seeking to  
be licensed under this chapter or seeking the renewal of a license  
under this chapter.

(2) "Board" means the Texas Board of Chiropractic  
Examiners.

(3) "Chiropractic care records" means records of  
patient treatment and care maintained by date of service.  
Chiropractic care records are the sole property of the patient and  
must be maintained and in the custody of the doctor of chiropractic  
providing the services for the period prescribed by the Texas Board  
of Chiropractic Examiners.

(4) "Commission" means the Texas Commission of  
Licensing and Regulation.

(5) "Commissioner" means the commissioner of  
licensing and regulation.

1           (6) "Contracted doctor of chiropractic" means any  
2 doctor of chiropractic as defined in Section 201.002(b) who holds a  
3 current active license to practice chiropractic and who has entered  
4 into a contractual agreement with a licensed chiropractic clinic  
5 owner to provide chiropractic care.

6           (7) "Controlling person" means:

7                   (A) an officer or director of a corporation  
8 seeking a license under this chapter, a shareholder holding 10  
9 percent or more of the voting stock of a corporation seeking to own  
10 or operate a non-doctor-of-chiropractic-owned chiropractic clinic,  
11 or a partner of a partnership seeking to own or operate a  
12 non-doctor-of-chiropractic-owned chiropractic clinic; or

13                   (B) an individual who possesses, directly or  
14 indirectly, the power to direct or cause the direction of the  
15 management or policies of a company that owns and operates a  
16 non-doctor-of-chiropractic-owned chiropractic clinic through the  
17 ownership of voting securities, by contract or otherwise.

18           (8) "Department" means the Texas Department of  
19 Licensing and Regulation.

20           (9) "Doctor of chiropractic" has the meaning assigned  
21 by Section 201.002(b).

22           (10) "Independent contractor" means a person other  
23 than a doctor of chiropractic who contracts to perform work or  
24 provide a service for the benefit of another and who:

25                   (A) is paid by the job, not by the hour or on some  
26 other time-measured basis;

27                   (B) is free to hire as many helpers as the person

1 desires and to determine what each helper will be paid; and

2 (C) is free to work for other contractors, or to  
3 send helpers to work for other contractors, while under contract to  
4 the hiring employer.

5 (11) "Licensee" means a person or entity licensed  
6 under this chapter who owns or operates a  
7 non-doctor-of-chiropractic-owned chiropractic clinic.

8 (12) "Non-doctor-of-chiropractic-owned chiropractic  
9 clinic" means a chiropractic facility licensed under this chapter  
10 and registered under Section 201.312.

11 (13) "Patient" means a person seeking and receiving  
12 chiropractic care or services.

13 (14) "Person" means an individual, association,  
14 corporation, organization, government or governmental subdivision  
15 or agency, business trust, estate trust, joint venture,  
16 partnership, or other legal entity.

17 (15) "Public company" means a corporation whose shares  
18 are listed on the New York Stock Exchange and that has total assets  
19 that exceed \$1 billion.

20 Sec. 207.002. RULES; INTERAGENCY COOPERATION. (a) The  
21 commissioner shall adopt rules as necessary to administer this Act.

22 (b) Rules shall be adopted in compliance with Chapter 2001,  
23 Government Code.

24 (c) Each licensee is governed and controlled by this chapter  
25 and the rules adopted by the commissioner.

26 (d) Notwithstanding any other provision of this chapter,  
27 nothing in this chapter preempts the existing statutory or

1 rulemaking authority of any other state agency or entity to  
2 regulate non-doctor-of-chiropractic-owned chiropractic clinics in  
3 a manner that is consistent with the statutory authority of that  
4 state agency or entity.

5 (e) Each state agency that, in performing duties under other  
6 law, affects the regulation of non-doctor-of-chiropractic-owned  
7 chiropractic clinics shall cooperate with the department, the  
8 commissioner, and other state agencies as necessary to fully  
9 implement and enforce this chapter. In particular, the board, the  
10 Texas Department of Insurance, the division of workers'  
11 compensation of the Texas Department of Insurance, and the attorney  
12 general's office shall assist in the implementation of this chapter  
13 and shall provide information to the department on request.

14 Sec. 207.003. LICENSE REQUIRED; APPLICATION. (a) A  
15 non-doctor-of-chiropractic-owned clinic may not allow a licensed  
16 doctor of chiropractic to engage in or offer chiropractic services  
17 or chiropractic care in this state without holding a license issued  
18 under this chapter.

19 (b) Each non-doctor-of-chiropractic-owned clinic that  
20 desires an original or renewal non-doctor-of-chiropractic-owned  
21 chiropractic clinic license shall file with the department a  
22 written application accompanied by the application fee.

23 (c) The department may require an applicant for a license  
24 to provide information and certifications necessary to determine  
25 that the applicant meets the licensing requirements of this  
26 chapter. The department may also require the applicant to provide  
27 information and certifications necessary to determine whether

1 individuals affiliated with the applicant are qualified to serve as  
2 controlling persons.

3 (d) An applicant, a licensee, a spouse of an applicant or  
4 licensee, a partner of an LLP, or any stockholder of a corporation  
5 is ineligible for a license for two years after the date of final  
6 department action on the denial or revocation of a license applied  
7 for or issued under this chapter. This restriction does not apply  
8 to a denial or revocation of a license if the basis of the action  
9 was:

10 (1) an inadvertent error or omission in the  
11 application if that error or omission is promptly corrected;

12 (2) the experience documented to the department was  
13 insufficient at the time of the previous application; or

14 (3) the department was unable to complete the criminal  
15 background investigation required under Section 207.004 because of  
16 insufficient information received from a local, state, or federal  
17 law enforcement agency.

18 (e) An applicant, a licensee, a spouse of an applicant or  
19 licensee, a partner of an LLP, or any stockholder of a corporation  
20 is ineligible for a license for one year after the date of final  
21 department action on the denial or revocation of a license applied  
22 for or issued under this chapter if:

23 (1) the basis of the denial or revocation was that one  
24 or more of the controlling persons affiliated with the applicant or  
25 licensee was determined by the department to be unsuitable; or

26 (2) that unsuitable controlling person has in fact  
27 ceased to be a controlling person of the applicant or licensee.

1       Sec. 207.004. LICENSE REQUIREMENTS. (a) To be qualified to  
2 serve as a controlling person of a licensee under this chapter, that  
3 person must be at least 18 years of age, be of good moral character,  
4 and have educational, managerial, or business experience relevant  
5 to:

6               (1) operation of a business entity offering  
7 chiropractic care; or

8               (2) service as a controlling person of a chiropractic  
9 care facility.

10       (b) For the purposes of this section, "good moral character"  
11 means a personal history of honesty, trustworthiness, fairness, a  
12 good reputation for fair dealing, and respect for the rights of  
13 others and for the laws of this state and nation.

14       (c) The department shall conduct a thorough background  
15 investigation of each individual applicant and of each controlling  
16 person of each applicant to determine whether that applicant or  
17 controlling person is qualified under this chapter. The department  
18 may deny an application for the issuance or renewal of a license if  
19 it finds that a controlling person is not qualified under this  
20 chapter. The investigation must include:

21               (1) the submission of fingerprints for processing  
22 through appropriate local, state, and federal law enforcement  
23 agencies; and

24               (2) examination by the department of police or other  
25 law enforcement records maintained by local, state, or federal law  
26 enforcement agencies.

27       (d) Department background investigations are governed by

1 this chapter and by Chapter 53 of this code and Section 411.122,  
2 Government Code. Conviction of a crime does not automatically  
3 disqualify a controlling person, require the revocation of a  
4 license, or require the denial of an application for a new or  
5 renewed license. The department shall consider criminal  
6 convictions as provided by Chapter 53 of this code and Section  
7 411.122, Government Code.

8 (e) Each licensee shall maintain a registered agent for the  
9 service of process in this state.

10 (f) An applicant for an original or renewal license must  
11 demonstrate a net worth as follows:

12 (1) \$50,000 if the applicant employs fewer than five  
13 assigned employees;

14 (2) \$75,000 if the applicant employs at least five but  
15 not more than eight assigned employees; or

16 (3) \$100,000 if the applicant employs more than eight  
17 assigned employees.

18 (g) For purposes of Subsection (f), "assigned employee"  
19 means a full-time employee whose normal work week is at least 25  
20 hours per week and whose work is performed in this state. The term  
21 does not include an employee hired to support or supplement the  
22 client's workforce in special work situations, such as employee  
23 absences.

24 (h) The applicant shall demonstrate net worth to the  
25 department by providing the department with the applicant's  
26 financial statement or a copy of the applicant's most recent  
27 federal tax return. The net worth requirement may also be satisfied

1 through guarantees, letters of credit, or other security acceptable  
2 to the department. A guaranty is not acceptable to satisfy this  
3 subsection unless the applicant submits sufficient evidence to  
4 satisfy the department that the guarantor has adequate resources to  
5 satisfy the obligations of the guaranty.

6 (i) In calculating net worth, an applicant shall include  
7 adequate reserves for all taxes and insurance, including reserves  
8 for claims incurred but not paid and for claims incurred but not  
9 reported under plans of self-insurance for health benefits. The  
10 calculation of net worth by an applicant shall be made according to  
11 Section 448, Internal Revenue Code of 1986.

12 (j) A document submitted to establish net worth must reflect  
13 the net worth as of a date not earlier than six months before the  
14 date on which the application is submitted. A document submitted to  
15 establish net worth must be prepared or certified by an independent  
16 certified public accountant. Information supplied regarding net  
17 worth, including copies of federal tax returns, is proprietary and  
18 confidential and is exempt from disclosure to third parties, other  
19 than to other governmental agencies with a reasonable legitimate  
20 purpose for obtaining the information.

21 Sec. 207.005. FEES. (a) Each applicant for an original or  
22 renewal license shall pay to the department on the issuance of the  
23 license or license renewal a fee set by the commission by rule in an  
24 amount not to exceed \$3,000.

25 (b) The commission is authorized to charge reasonable fees  
26 for license applications and renewals, investigations,  
27 inspections, and any other administrative or enforcement

1 responsibilities created under this chapter.

2 Sec. 207.006. WORKERS' COMPENSATION INSURANCE. A licensee  
3 may elect to obtain workers' compensation insurance coverage for  
4 its assigned employees through an insurance company as defined  
5 under Section 401.011, Labor Code, or through self-insurance as  
6 provided under Chapter 407, Labor Code.

7 Sec. 207.007. UNEMPLOYMENT TAXES; PAYROLL. A licensee is  
8 the employer of an assigned employee for purposes of Subtitle A,  
9 Title 4, Labor Code. In addition to any other reports required to  
10 be filed by law, a licensee shall report quarterly to the Texas  
11 Workforce Commission the name, address, telephone number, federal  
12 income tax identification number, and classification code as  
13 described in the Standard Industrial Classification Manual as  
14 published by the United States Office of Management and Budget of  
15 each client company on a form prescribed by the Texas Workforce  
16 Commission.

17 Sec. 207.008. POSTING OF LICENSES. (a) The commissioner by  
18 rule shall determine the form and content of:

19 (1) the licenses issued under this chapter; and

20 (2) notices required to be posted under this section.

21 (b) Each license issued under this chapter must be posted in  
22 a conspicuous place in the principal place of business in this state  
23 of the licensee. Each licensee shall display, in a place that is  
24 clear and unobstructed public view, a notice stating that the  
25 business operated at the location is licensed and regulated by the  
26 department and that any questions or complaints should be directed  
27 to the department.

1           (c) Each licensee issued a  
2 non-doctor-of-chiropractic-owned chiropractic clinic license  
3 under this chapter must provide a copy of that license to the board  
4 and to any and all contracting doctors of chiropractic upon receipt  
5 of the initial license and annually upon renewal.

6           Sec. 207.009. LICENSE NOT ASSIGNABLE; CHANGES OF NAME OR  
7 LOCATION. (a) A licensee may not conduct business under any name  
8 other than that specified in the license. A license issued under  
9 this chapter is not assignable. A licensee may not conduct business  
10 under any fictitious or assumed name without prior written  
11 authorization from the department. The department may not  
12 authorize the use of a name that is so similar to that of a public  
13 office or agency or to that of another licensee that the public may  
14 be confused or misled by its use. A licensee may not conduct  
15 business under more than one name unless it has obtained a separate  
16 license for each name.

17           (b) A licensee may change its licensed name at any time by  
18 notifying the department and paying a fee for each change of name.  
19 The commission by rule shall set the fee for a name change in an  
20 amount not to exceed \$50. A licensee may change its name on renewal  
21 of the license without the payment of the name change fee.

22           (c) A licensee must notify the department in writing within  
23 30 days of:

24                   (1) any change in the location of its primary business  
25 office;

26                   (2) the addition of more business offices; or

27                   (3) a change in the location of business records

1 maintained by the licensee.

2 Sec. 207.010. PROHIBITED ACTS; CRIMINAL PENALTY. (a) A  
3 person may not:

4 (1) offer chiropractic services without holding a  
5 license under this Act as a non-doctor-of-chiropractic-owned  
6 chiropractic clinic;

7 (2) use the name or title "chiropractic clinic,"  
8 "chiropractic offices," or any derivation of the term  
9 "chiropractic," or otherwise represent that the person is licensed  
10 under this chapter unless the person holds a license issued under  
11 this chapter;

12 (3) represent as its own the license of another  
13 location or represent that a facility is licensed if the person does  
14 not hold a license;

15 (4) give materially false or forged evidence to the  
16 department in connection with obtaining or renewing a license or in  
17 connection with disciplinary proceedings under this chapter; or

18 (5) use or attempt to use a license that has expired or  
19 been revoked.

20 (b) A person that violates Subsection (a) commits an  
21 offense. An offense under this subsection is a Class A misdemeanor.

22 (c) The commissioner may notify the attorney general of a  
23 violation, and the attorney general may apply to a district court in  
24 Travis County for permission to file suit in the nature of quo  
25 warranto or for injunctive relief, or both. The attorney general  
26 may not be required to post a bond for injunctive relief.

27 Sec. 207.011. DISCIPLINARY ACTIONS. (a) For purposes of

1 this section, "conviction" includes a plea of nolo contendere or a  
2 finding of guilt, regardless of adjudication.

3 (b) Disciplinary action may be taken against a licensee by  
4 the department on any of the following grounds:

5 (1) the conviction of a licensee or any controlling  
6 person of a licensee of bribery, fraud, or intentional or material  
7 misrepresentation in obtaining, attempting to obtain, or renewing a  
8 license;

9 (2) the conviction of a licensee or any controlling  
10 person of a licensee of a crime that relates to the operation of a  
11 non-doctor-of-chiropractic-owned chiropractic clinic or the  
12 ability of the licensee or any controlling person of a licensee to  
13 operate a non-doctor-of-chiropractic-owned chiropractic clinic;

14 (3) the conviction of a licensee or any controlling  
15 person of a licensee of a crime that relates to the classification,  
16 misclassification, or underreporting of employees under Subtitle  
17 A, Title 5, Labor Code;

18 (4) the conviction of a licensee or any controlling  
19 person of a licensee of a crime that relates to the establishment or  
20 maintenance of a self-insurance program, whether health insurance,  
21 workers' compensation insurance, or other insurance;

22 (5) the conviction of a licensee or any controlling  
23 person of a licensee of a crime that relates to fraud, deceit, or  
24 misconduct in the operation of a staff leasing service;

25 (6) engaging in services of a  
26 non-doctor-of-chiropractic-owned chiropractic clinic without a  
27 license;

1           (7) transferring or attempting to transfer a license  
2 issued under this chapter;

3           (8) violating this chapter or any order or rule issued  
4 by the department or commissioner under this chapter;

5           (9) failing to notify the department, in writing, of  
6 the felony conviction of any controlling person not later than the  
7 30th day after the date on which that conviction is final;

8           (10) failing to cooperate with an investigation,  
9 examination, or audit of the licensee's records conducted by the  
10 licensee's insurance company or the insurance company's designee,  
11 as allowed by the insurance contract or as authorized by law by the  
12 board;

13           (11) failing to notify the department and the board  
14 not later than the 30th day after the effective date of the change  
15 of any change in ownership, principal business address, or the  
16 address of accounts and records;

17           (12) failing to correct any tax filings or payment  
18 deficiencies within a reasonable time as determined by the  
19 commissioner;

20           (13) refusing, after reasonable notice, to meet  
21 reasonable health and safety requirements within the licensee's  
22 control and made known to the licensee by a federal or state agency;

23           (14) a delinquency in the payment of any taxes or debts  
24 owed to the State of Texas other than those subject to a legitimate  
25 dispute;

26           (15) knowingly making a material misrepresentation to  
27 an insurance company, or to the department or other governmental

1 agency; or

2 (16) failing to maintain the net worth requirements  
3 required under Section 207.004.

4 (c) On a finding that a licensee has violated one or more  
5 provisions of Subsection (b), the department may:

6 (1) deny an application for a license;

7 (2) revoke, restrict, or refuse to renew a license;

8 (3) impose an administrative penalty in an amount not  
9 less than \$1,000 per violation, but not more than \$50,000;

10 (4) issue a reprimand; or

11 (5) place the licensee on probation for the period and  
12 subject to conditions that the department specifies.

13 (d) On revocation of a license, the licensee shall  
14 immediately return the revoked license to the department and notify  
15 all employees, all patients, and the board that the clinic may no  
16 longer provide chiropractic care and services.

17 (e) Disciplinary action may be taken, a denial of an  
18 application for a new or renewal license or a revocation of a  
19 license may be done, or a determination that a controlling person is  
20 unqualified may be made by the department only subject to Chapter  
21 2001, Government Code, with notice to, and an opportunity for a  
22 hearing by, the affected applicant, licensee, or controlling  
23 person.

24 (f) If a license is revoked or renewal is denied, the  
25 affected licensee may request a reinstatement hearing after a  
26 minimum of one year. The department may reinstate or renew the  
27 license only if the cause of the nonrenewal or revocation has been

1 corrected.

2 Sec. 207.012. FEES USED FOR ADMINISTRATION. All fees  
3 collected by the department under this chapter shall be used to  
4 implement this chapter.

5 Sec. 207.013. EFFECT OF OTHER LAW. This chapter does not  
6 exempt any assigned employee of a licensee from any other license  
7 requirements imposed under local, state, or federal law.

8 SECTION 2. A person is not required to hold a license under  
9 this Act to operate a non-doctor-of-chiropractic-owned  
10 chiropractic clinic until January 1, 2008.

11 SECTION 3. This Act takes effect September 1, 2007.